

RULE 42. EMERGENCY PROTECTIVE CARE HEARING**Rule 42.01. Timing**

Subd. 1. Generally. The court shall hold an emergency protective care hearing within 72 hours of the child being taken into emergency protective care unless the child is released pursuant to Rule 41. The purpose of the hearing shall be to determine whether the child shall be returned home or placed in protective care.

Subd. 2. Continuance. The court may, upon its own motion or upon the written or oral motion of a party made at the emergency protective care hearing, continue the emergency protective care hearing for a period not to exceed eight days. A continuance may be granted:

(a) upon a determination by the court that there is a prima facie showing that the child should be held in emergency protective care pursuant to Rule 40; and

(b) upon a finding by the court that a continuance is necessary for:

(1) the protection of the child;

(2) the accumulation or presentation of necessary evidence or witnesses;

(3) to protect the rights of a party; or

(4) other good cause shown.

Rule 42.02. Notice of Hearing

The court administrator, or designee, shall inform the following persons of the time and place of the emergency protective care hearing:

(a) the county attorney;

(b) the responsible social services agency;

(c) the child;

(d) the child's counsel;

(e) the child's guardian ad litem;

(f) the child's parent or legal custodian;

(g) the child's spouse, if any;

(h) the child's Indian custodian;

(i) the child's Indian tribe;

(j) the tribal social services agency as required by Minnesota Statutes, section 260.761, subdivision 2, paragraph (c), and Rule 30.02; and

(k) those persons required by Minnesota Statutes, section 127A.47, subdivision 6.

Rule 42.03. Inspection of Reports

Prior to the emergency protective care hearing, the parties shall be permitted to inspect reports or other documents that any party intends to present at the hearing.

Rule 42.04. Determination Regarding Notice

During the hearing, the court shall determine whether all persons identified in Rule 42.02 have been informed of the time and place of the emergency protective care hearing and what further efforts, if any, must be taken to notify all parties and participants as rapidly as possible of the pendency of the matter and the date and time of the next hearing. Before the emergency protective care hearing, the court administrator, or designee, shall file with the court a written statement describing the efforts to inform the persons identified in Rule 42.02 of the emergency protective care hearing, including the date, time, and method of each effort to inform each person and whether contact was actually made.

Rule 42.05. Advisory

At the beginning of the emergency protective care hearing the court shall on the record advise all parties and participants present of:

- (a) the reasons why the child was taken into emergency protective care;
- (b) the substance of the statutory grounds and supporting factual allegations set forth in the petition;
- (c) the purpose and scope of the hearing;
- (d) the possible consequences of the proceedings;
- (e) the right of the parties and participants to legal representation, including the right of the child, the child's parent or legal custodian, and the child's Indian custodian to court-appointed counsel pursuant to Rule 36;
- (f) the right of the parties to present evidence and to cross-examine witnesses regarding whether the child should return home with or without conditions or whether the child should be placed in protective care; and
- (g) that failure to appear at future hearings could result in a finding that the petition has been proved, issuance of an order adjudicating the child in need of protection or services, and an order transferring permanent legal and physical custody of the child to another.

Rule 42.06. Evidence

The court may admit any evidence, including reliable hearsay and opinion evidence, that is relevant to the decision of whether to continue protective care of the child or return the child home. Privileged communications may be admitted if authorized by Minnesota Statutes, section 626.556, subdivision 8.

Rule 42.07. Filing and Service of Petition

A child in need of protection or services petition or a permanency petition shall be filed with the court and may be served at or before the emergency protective care hearing.

Rule 42.08. Protection Care Determinations**Subd. 1. Initial Determinations**

At the emergency protective care hearing, the court shall make the following determinations:

- (a) **Prima Facie Showing.** The court shall dismiss the petition if it finds that the petition fails to establish a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter.

(b) Endangerment.

(1) **Findings.** If the court finds that the petition establishes a prima facie showing that a juvenile protection matter exists and that the child is the subject of that matter, the court shall then determine whether the petition also makes a prima facie showing that:

(i) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian; or

(ii) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian.

(2) **Determination.** If the court finds that endangerment exists pursuant to this subdivision, the court shall continue protective care or release the child to the child's parent or legal custodian and impose conditions to ensure the safety of the child or others. If the court finds that endangerment does not exist, the court shall release the child to the child's parent or legal custodian subject to reasonable conditions of release.

(3) **Continued Custody by Parent Contrary to Welfare of Child.** The court may not order or continue the foster care placement of the child except as permitted by Minnesota Statutes, section 260C.178, subdivision 1, paragraph (f).

(c) **Reasonable or Active Efforts.** Based upon the information provided to the court, the court shall make a determination whether reasonable efforts, or active efforts in the case of an Indian child pursuant to Rule 28.07, subd. 1, were made to prevent the child's out-of-home placement. The court shall also determine whether there are available services that would prevent the need for further placement. In the alternative, the court shall determine that reasonable efforts are not required if the court makes a prima facie determination that one of the circumstances under subdivision 1(d) exists.

(d) **Placement of Child.** In making a determination of the initial placement of the child, except in cases described in Rule 42.08, subd. 1(e), or when the parental rights of the parent to a sibling of the child have been terminated involuntarily, or the child is presumed to be an abandoned infant under Minnesota Statutes, section 260C.301, subdivision 2, at the emergency protective care hearing the court shall require the petitioner to present information regarding the following issues:

(1) whether there are services the court could order that would allow the child to safely return home;

(2) whether responsible relatives of the child, or other responsible adults who are licensed to provide foster care for a child, are available to provide services or to serve as placement options;

(3) whether the placement proposed by the agency is the least restrictive and most home-like setting that meets the needs of the child;

(4) whether restraining orders, or orders expelling an allegedly abusive parent or legal custodian from the home, are appropriate;

(5) whether orders are needed for examinations, evaluations, or immediate services;

(6) the terms and conditions for parental visitation; and

(7) what consideration has been given for financial support of the child.

(e) Cases Permitting Bypass of Child in Need of Protection or Services Proceedings.

(1) **Permanency Determination.** Reasonable efforts to prevent placement and for rehabilitation and reunification are always required except upon notice by the county attorney and a determination by the court at the emergency protective care hearing, or at any time prior to adjudication, that a petition has been filed stating a prima facie case that at least one of the circumstances under Minnesota Statutes, section 260.012, paragraph (a), exists.

(2) **Permanency Hearing Required.** If the court makes a determination under subdivision 3(a), the court shall bypass the child in need of protection or services proceeding and shall proceed directly to permanency pursuant to Rules 52-59.

Subd. 2. Indian Child Determination. The court shall determine whether the child is an Indian child through review of the petition and other documents and an on-the-record inquiry as required by Rule 29.01. If the court is unable to determine whether the child is an Indian child, the court shall direct the petitioner to make further inquiry and provide to the court and parties additional information regarding whether the child is an Indian child. If the court determines the child is an Indian child, the court shall apply Rules 28-31 and the requirements of the Indian Child Welfare Act and the Minnesota Indian Family Preservation Act.

Subd. 3. Emergency Removal and Placement Authority for Indian Child Ward, Resident, or Domiciliary. In proceedings where an Indian child resides or is domiciled on an Indian reservation, or is a ward of tribal court, the court shall proceed pursuant to Rule 28.07, subd. 2.

Rule 42.09. Protective Care Findings and Order

Within three days of the conclusion of the emergency protective care hearing, the court shall issue a written order which shall include findings pursuant to Rule 42.08 and which shall order:

(a) that the child:

- (1) continue in protective care;
- (2) return home with conditions to ensure the safety of the child or others;
- (3) return home with reasonable conditions of release; or
- (4) return home with no conditions;

(b) conditions pursuant to subdivision (a), if any, to be imposed upon the parent, legal custodian, or a party;

(c) services, if any, to be provided to the child and the child's family;

(d) terms of parental and sibling visitation pending further proceedings;

(e) the parent's responsibility for costs of care pursuant to Minnesota Statutes, section 260C.331, subdivision 1; and

(f) if the court knows or has reason to know that the child is an Indian child, notice of the proceedings shall be sent to the Indian child's parents or Indian custodian and Indian child's tribe consistent with 25 U.S.C. section 1912(a) and Rule 30.01.

Rule 42.10. Protective Care Review

Subd. 1. Consent for Continued Protective Care. The court may, with the consent of the parties and the county attorney, order that the child continue in protective care even if the circumstances of the parent, legal custodian, or child have changed.

Subd. 2. Release from Protective Care on Consent of Parties and the County Attorney.

The court may, with the consent of the parties and the county attorney, order that a child be released from protective care. If the child has no guardian ad litem, the court may not release the child from protective care without a court hearing.

Subd 3. Formal Review.

(a) **On Motion of Court.** The court may on its own motion schedule a formal review hearing at any time.

(b) **On Request of a Party or the County Attorney.** A party or the county attorney may request a formal hearing concerning continued protective care by filing a motion with the court. The court shall schedule a hearing and provide notice pursuant to Rule 44 if the motion states:

(1) that the moving party has new evidence concerning whether the child should be continued in protective care; or

(2) that the party has an alternative arrangement to provide for the safety and protection of the child.

(c) **Evidence.** The court may admit any evidence, including reliable hearsay and opinion evidence, which is relevant to the decision whether to continue protective care of the child or return the child home. Privileged communications may be admitted if authorized by Minnesota Statutes, section 626.556, subdivision 8.

(d) **Findings and Order.** At the conclusion of the formal review hearing the court shall:

(1) return the child to the care of the parent or legal custodian with or without reasonable conditions of release if the court does not make findings pursuant to subdivision 3(d)(2);

(2) continue the child in protective care or release the child with conditions to assure the safety of the child or others if the court finds that the petition states a prima facie case to believe that a child protection matter exists and that the child is the subject of that matter, and (a) the child or others would be immediately endangered by the child's actions if the child were released to the care of the parent or legal custodian or (b) the child's health, safety, or welfare would be immediately endangered if the child were released to the care of the parent or legal custodian; or

(3) modify the conditions of release.

Rule 42.11. Notification When Child Returned Home

If the parents comply with the conditions of the court order and the child is returned home, including under protective supervision, the county attorney shall immediately file with the court and serve upon all parties a notice stating the date the child was returned home.

2019 Advisory Committee Comment

Rule 42 is amended in 2019 as part of a revision of the Rules of Juvenile Protection Procedure. The rule was formerly codified as Rule 30.